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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,320	03/05/2002	Andre Rougier	016800-464	9439

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EXAMINER

BADIO, BARBARA P

ART UNIT PAPER NUMBER

1617

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/937,320	<b>Applicant(s)</b> ROUGIER ET AL.	
	<b>Examiner</b> Barbara P. Badio, Ph.D.	<b>Art Unit</b> 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 12-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

*rd*

**Final Office Action on the Merits**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

2. The rejection of claims 13, 16-19 and 21 under 35 USC 112, second paragraph is withdrawn.

***Claim Rejections - 35 USC § 102***

3. The rejection of claims 12, 14 and 15 under 35 USC 102(b) over Lerner (US 5,470,874) is maintained and claim 30 is rejected under 35 USC 102(b) over Lerner (US 5,470,874).

Applicant argues the present invention is not related to collagen synthesis but to cell renewal and barrier function. Applicant also argues unlike instant invention, Lerner teaches a composition containing 10-25% of ascorbic acid. Applicant's argument was considered but not persuasive for the following reasons.

Applicant's argument as to the concentration of ascorbic acid taught by the reference is noted. However, the instant claims are not limited by the amount of ascorbic acid.

As stated in the previous Office Action, claiming a new use, new function or unknown property which is inherently present in the prior art does not lend patentable to said claimed invention.

Also as stated in the previous Office Action, stimulation of fibroblast proliferation leads to production of keratinocyte growth factors and stimulation of collagen synthesis. The art teaches that increase collagen synthesis results in reduction or vanishing of visible wrinkles, leatheriness, roughness, dryness, skin looseness, loss of elasticity and pigment variation (see **Lerner**, col. 1, lines 53-62; **Wilmot**, US 4,983,382, col. 1, lines 16-34; **Dumas et al.**, US 5,801,192, col. 1, lines 31-60).

Lastly, one cannot separate a compound and its properties and, thus, the skilled artisan would have the reasonable expectation that the composition taught by Lerner would possess all the properties of ascorbic acid and its analogues, including those recited by the instant claims.

For these reasons and those given in the previous Office Action, the rejection of claims 12, 14 and 15 under 35 USC 102(b) over Lerner (US 5,470,874) is maintained and claim 30 is rejected under 35 USC 102(b) over Lerner (US 5,470,874).

4. The rejection of claims 13, 17 and 21 under 35 USC 102(b) over Perricone (US 5,574,063) is maintained and claim 31 is rejected under 35 USC 102(b) over Perricone (US 5,574,063).

Applicant's argument and the examiner's response are as discuss above in #3.

5. Claims 12-23, 30 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Dumas et al. (US 5,801,192).

Dumas et al. teach the use of vitamin C or derivatives as cosmetic agents for promoting the synthesis of elastin by the fibroblasts of the dermis, with a view to improve the elasticity of the skin, skin tone or skin firmness (see the entire article, especially col. 1, line 46 – col. 2, line 29; col. 2, lines 43-67). The reference teaches (a) the use of ascorbic derivative at a concentration between 0.001% and 5% with respect to the total weight of the composition (see col. 2, lines 8-15; Examples 1-5) and (b) various length of treatment or treatment regimens (see Examples 2-4). The method taught by the reference is encompassed by the instant claims.

Note: As stated in the previous Office Action, when the claim recites using an old composition and the use is directed to a result or property of that composition, the claim is anticipated. See In re May, 574 F. 2d 1082, 1090, 197 USPQ 601, 607 (CCPA 1978).

### ***Claim Rejections - 35 USC § 103***

6. The rejection of claims 13, 16-23 under 35 USC 103(a) as being unpatentable over Lerner as applied to Claims 12, 14 and 15 above, and further in view of Perricone is maintained and claims 24-31 are rejected under 35 USC 103(a) as being unpatentable over Lerner as applied to Claims 12, 14 and 15 above, and further in view of Perricone.

Applicant's argument and the examiner's response are as discussed above in #3.

7. Claims 12-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumas et al. (US 5,801,192).

Dumas et al. teach the use of vitamin C or derivatives as cosmetic agents for promoting the synthesis of elastin by the fibroblasts of the dermis, with a view to improve the elasticity of the skin, skin tone or skin firmness (see the entire article, especially col. 1, line 46 – col. 2, line 29; col. 2, lines 43-67). The reference teaches (a) the use of ascorbic derivative at a concentration between 0.001% and 5% with respect to the total weight of the composition (see col. 2, lines 8-15; Examples 1-5) and (b) various length of treatment or treatment regimen (see Examples 2-4).

The instant claims differ from the reference by reciting additional ascorbic acid derivatives and/or concentration of ascorbic acid derivative not exemplified by the reference. However, the reference teaches the use of various ascorbic acid derivatives and a concentration range between 0.001% and 5%. Therefore, the skilled artisan would be motivated to utilize any of the derivatives of ascorbic acid disclosed by the reference in concentrations taught by the reference, including those of the instant claims, because he would have the reasonable expectation the utilization of any of the prior art compounds in concentrations taught by the prior art would have similar properties and, thus, the same use as taught by Dumas.

Claims 24, 25, 28 and 29 further differ from the reference by reciting a treatment period of about fifteen days. However, (a) the reference exemplifies different treatment regimens (see Examples 2-4) and (b) the determination of the length of treatment in order to obtain optimum results would require only routine experimentation that is within

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the level of skill of the ordinary artisan in the dermatological art. Therefore, the instant claims are prima facie obvious in view of the prior art and the level of skill of the ordinary artisan in the art at the time of the present invention.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

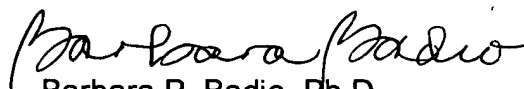
### ***Telephone Inquiry***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara P. Badio, Ph.D. whose telephone number is 571-272-0609. The examiner can normally be reached on M-F from 6:30am-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Barbara P. Badio, Ph.D.  
Primary Examiner  
Art Unit 1617

BB  
June 7, 2005